IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6575 of 1985
For Approval and Signature:
Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISMAILBHAI A SUMRA
Versus
R K ABICHANDANI, THE REGISTRAR

Appearance:
MR PK JANI for Petitioner
MR MG DOSHIT for Respondent No. 1
NOTICE SERVED BY DS for Respondent No.....

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI and
MR.JUSTICE C.K.THAKKAR
Date of decision: 08/02/2000
ORAL JUDGEMENT: (Per C.K. Thakkar, J.)

This petition is filed by the petitioner for an appropriate writ, direction or order in terms of paragraph 17 of the petition. The said paragraph reads as under :-

> "17. The petitioner, therefore, prays that,
> (i) The Hon'ble Court may be pleased to issue an appropriate writ or direction, directing respondent no.2 not to revert the petitioner pending the hearing and final

disposal of this petition.

(ii) The Hon'ble Court be further pleased to pass the order giving posting to the petitioner as P.A. to District Judge.

(iii) Pending the hearing and final disposal of this writ petition the Hon'ble Court may be pleased to stay the order of reversion passed by respondent no.2 against the petitioner reverting the petitioner from Steno. Gd. I to Steno Gd. II. Be further pleased to stay the implementation and operation of the order of reversion if at all it is already passed.

(iv) Costs of this petition be awarded.... "

The case of the petitioner was that he was appointed as English Section Writer in 1966. In 1977, the petitioner had passed an Examination in Stenography and was appointed as Stenographer Grade II. He was working as English Stenographer Grade II in the District Court at Mehsana. He was attached to the Joint District Judge. In 1982, according to the petitioner, the Honourable High Court of Gujarat conducted the test for promotional post of Stenographer Grade I. The test was conducted by Shri N.K. Prabhu, the then P.A. to the Hon'ble Chief Justice. The petitioner passed the said test and an order to that effect was made on September 27, 1982. The petitioner was accordingly informed that he had cleared the test and that he was placed in the list of Stenographer Grade I. He was appointed as Stenographer Grade I on September 28, 1982.

According to the petitioner, one Shri B.G. Ghanchi, respondent No.3 in the petition, also appeared at the test of English Stenographer Grade I. He, however, failed in the said test. In pursuance of the test undertaken, the District Judge, Mehsana, respondent No.2 herein, passed an Office Order No.350 of 1982, in which it was stated that the petitioner, who was attached to the Joint District Judge and Additional Sessions Judge, Mehsana had passed the test for English Stenographer Grade I conducted by the Honourable High Court of Gujarat and that he was placed in the pay scale

of Rs.650-1040. Respondent No.3, who had not passed the test, was to be reverted. At that stage, a representation came to be made by respondent No.3, inter alia, contending that he had already passed an examination for appointment as English Stenographer Grade I conducted by the Government of Gujarat and it was, therefore, not necessary again for him to clear the test conducted by the High Court. It appears that he had filed a substantive petition, being Special Civil Application No.2794 of 1985, and obtained interim relief. The petitioner, in these circumstances, came to be reverted by an order dated November 30, 1985, which is challenged in this petition.

When the matter was placed before the learned Single Judge, attention of the learned Single Judge was invited to the fact that a petition, being Special Civil Application No.2794 of 1985, was also filed by respondent No.3 and in view of the fact that there were two conflicting decisions of two Honourable Single Judges of this Court, the matter was ordered to be placed before a Division Bench. The learned Single Judge in these circumstances, passed the order to place this matter also before a Division Bench and it was ordered to be heard along with Special Civil Application No.2794 of 1985.

We have heard Mr.P.K. Jani, learned counsel for the petitioner. Appearance of Messrs. M.G. Doshit is shown for respondents Nos. 1 and 2. So far as respondent No.3 is concerned, even though served, he does not appear.

Mr.Jani, learned counsel for the petitioner, stated that Special Civil Application No.2794 of 1985 (filed by respondent No.3) came up before a Division Bench for final hearing and by a judgment and order dated January 18, 1999 / February 26, 1999, it was disposed of, upholding the view taken by the administrative side of the High Court that if the petitioner therein wanted to get post of Stenographer Grade I, he ought to have passed the test taken by the Honourable High Court. It was also held that even if the petitioner had cleared the examination conducted by the Government of Gujarat, it was obligatory on his part to get the test taken by the High Court cleared and since it was not done, an action could have been taken reverting him from Stenographer Grade I to Stenographer Grade II. Accordingly, the petition was dismissed.

Since the present petition is filed in view of that fact that in a petition filed by respondent No.3

against the action taken against him, the petitioner was reverted and since that petition is dismissed, in our opi....

also stated that respondent No.3 has already retired on reaching the age of superannuation.

In these circumstances, in our opinion, the present petition does not survive. When the petition was filed, there was apprehension on the part of the petitioner that he was likely to be reverted in view of filing of Special Civil Applicaiton NO.2794 of 1985 by respondent No.3 and grant of interim order in his favour. In fact, thereafter, an order, being Office Order No.206 of 1985, was passed on November 30, 1985. Part II thereof reads as under :-

> "...
> II
>
> Shri I.A. Sumra, Eng. Steno. Grade-I working in the Court of the Joint District Judge, Mehsana is reverted as Eng. Steno. Gr-II in the scale of Rs.475-800 and posted to officiate as such in the Court of the Extra Assistant Judge, Mehsana vice Shri S. Doraiswamy .... "

The petitioner, therefore, filed Civil Application No.117 of 1986, which application was granted and interim relief was granted by this Court in favour of the petitioner, staying the operation of the order passed against the petitioner.

In view of the fact that, now, Special Civil Applicaiton No.2794 of 1985 is already dismissed by a Division Bench of this Court, obviously, the aforesaid order will not survive and it is quashed and set aside so far as the present petitioner is concerned. Accordingly, the petition is disposed of. Rule is made absolute to the above extent. In the facts and circumstances, no order as to costs.

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(apj)